

UNITED STATES DISCRIT COURT
SOUTHERN DISTRICT OF NEW YORK

PROJECT VERITAS and PROJECT
VERITAS ACTION FUND,

Plaintiffs,

v.

JAMES O'KEEFE, TRANSPARENCY 1,
LLC d/b/a O'KEEFE MEDIA GROUP, RC
MAXWELL, and ANTHONY
IATROPOULOS,

Defendants.

Civil Action No. 7:23-cv-04533

**DEFENDANTS O'KEEFE AND OMG'S MOTION
FOR ORDER AUTHORIZING ALTERNATIVE SERVICE
OF SUBPOENA FOR THIRD PARY MATTHEW TYRMAND**

Defendants JAMES O'KEEFE and TRANSPARENCY 1, LLC d/b/a O'KEEFE MEDIA GROUP (collectively "Defendants"), hereby move this Court pursuant to Fed. R. Civ. P. 45 for an order authorizing alternative service of its Subpoena for Deposition Duces Tecum upon third party Matthew Tyrmand via electronic service and in support state:

The present dispute between Plaintiffs, Project Veritas and Project Veritas Action Fund, and Defendants, James O'Keefe and O'Keefe Media Group, as exemplified through Plaintiffs' operative Complaint [Doc. 16] and Defendants' Counterclaims [Doc. 73], hinges on the actions of a few central characters. Matthew Tyrmand, a former Project Veritas board member, who organized the February 6, 2023, Board meeting and has been

publicly adamant about the righteousness of his actions before he resigned, is one of the central characters.

Mr. Tyrmand is directly responsible for the way in which Mr. O’Keefe’s separation from Project Veritas unfolded, and is indisputably connected to key facts and evidence. Since his resignation, Mr. Tyrmand has continued to hurl public insults at Mr. O’Keefe and has appeared on at least two occasions on the *Dangerous Rhetoric* podcast to advance unfounded allegations against James O’Keefe.¹ Mr. Tyrmand’s actions, during and after his tenure as a Project Veritas Board member, make it essential for the Defendants to have the opportunity to depose Mr. Tyrmand and request the production of related documents to substantiate Mr. Tyrmand’s public allegations. Mr. Tyrmand has been closely following the case, routinely posting about the merits of the case on X (formerly Twitter), and spoke to George Skakel (another former Project Veritas Board member) on the morning of his deposition. During Episode 125 of the *Dangerous Rhetoric* podcast, Mr. Tyrmand stated that he would happily be deposed.²

Defendants have made multiple good faith attempts to serve Mr. Tyrmand with a Subpoena for Deposition Duce Tecum. First, Defendants coordinated with Plaintiffs’ counsel to set Mr. Tyrmand’s deposition and issued a Subpoena for deposition on October 28, 2024 (attached as **Exhibit A**). Defendants unsuccessfully attempted to serve the Subpoena on Mr. Tyrmand at his Miami address multiple times in early November,

¹ Mr. Tyrmand appeared on *Dangerous Rhetoric* Episodes 124 and 125, the latter of which was released on November 23, 2024. The episodes are available here: <https://www.youtube.com/watch?v=BVqkrWtI5-I> and here: <https://www.youtube.com/watch?v=FqDwRA4zZAQ>.

² See Episode 125 (linked above) at approximately 2:34:45.

as well as an address where Mr. Tyrmand was known to reside in New York. (See attached Affidavits of Non-Service attached as **Composite Exhibit B**).

Plaintiffs' counsel then provided Mr. Tyrmand's address in response to Defendants' discovery requests, confirming that it was the same Miami address Defendants previously provided to the process server. Defendants re-doubled their efforts and rescheduled Mr. Tyrmand's deposition for December 16, 2024, and attempted to serve another Subpoena Duces Tecum for Deposition Duces Tecum on Mr. Tyrmand multiple times at his Miami address, including November 27, 2024, November 28, 2024, November 30, 2024, and December 3, 2024. (See Subpoena and Affidavit of Non-Service attached as **Exhibits C and D**).

Given Mr. Tyrmand's statements on the *Dangerous Rhetoric* podcast, counsel for Defendants emailed Mr. Tyrmand on November 28, 2024, at the email address provided by Plaintiffs' counsel in response to discovery requests, with a copy of the Subpoena for Deposition Duces Tecum and asked Mr. Tyrmand to accept service. (See email from Nicholas Whitney on November 28, 2024, attached as **Exhibit E**). Defendants' counsel has not received a response from Mr. Tyrmand confirming receipt or accepting service.

In alignment with the principle that rules should be interpreted and applied to ensure the fair, prompt, and cost-effective resolution of all cases (*see, Cordius Trust v. Kummerfeld*, 45 Fed. R. Serv. 3d 1151, 2000 WL 10268, at *2 (S.D.N.Y. Jan. 3, 2000), *quoting Fed. R. Civ. P. 1*), courts have authorized alternative service methods in circumstances where personal service has been repeatedly unsuccessful (*see also, SEC v. David*, No. 19-cv-9013, 2020 WL 703464, at *1-2 (S.D.N.Y. Feb. 12, 2020)) or when discovery deadlines

are imminent (*see, In re Petrobras Securities Litig.*, No. 14-CV-9662, 2016 WL 908644, at *1-2 (S.D.N.Y. Mar. 4, 2016) (Rakoff, J.)).

Defendants have made multiple good faith attempts to serve Mr. Tyrmand with a subpoena commanding his attendance at deposition, and have patiently coordinated dates with Plaintiffs' counsel to allow for such deposition. Discovery deadlines are imminent. Depositions are to be completed in just over two (2) months on February 14, 2025, and all discovery is to be completed on March 14, 2025, according to the Court's Scheduling Order of August 2, 2024 [Doc. 68].

WHEREFORE, Defendants respectfully request that the Court enter an order authorizing alternative service of its Subpoena for Deposition Duces Tecum upon third party Matthew Tyrmand via email and/or X post and all such other relief as the Court deems just and proper.

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Dated this 6th day of December 2024.



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Counsel for Defendants O'Keefe & OMG

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing document (including any attached exhibits and documents) electronically with the Clerk of the Court using CM/ECF on December 6, 2024, which served same electronically upon all counsel of record.

/s/ Nicholas P. Whitney

Attorney